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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

15 Cr. 536 (PGG)

6 IRFAN AMANAT,

7 Sentence

Defendant.

8 -----x
9 New York, N.Y.
10 September 8, 2021
11 1:00 p.m.

12 Before:

13 HON. PAUL G. GARDEPHE,

14 District Judge

15 APPEARANCES

16 AUDREY STRAUSS
17 United States Attorney for the
Southern District of New York

18 JOSHUA NAFTALIS
Assistant United States Attorney

19 PRIYA CHAUDHRY
Attorney for Defendant

20 Also Present:

21 JULIE D'AMATO, Special Agent

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1 (In open court)

2 THE DEPUTY CLERK: United States of America v. Irfan
3 Amanat.

4 Counsel for the government, please state your
5 appearance.

6 MR. NAFTALIS: Good afternoon, your Honor. Joshua
7 Naftalis. With me at counsel table is Special Agent Julia
8 D'Amato with the FBI.

9 THE DEPUTY CLERK: Counsel for the defendant, please
10 state your appearances.

11 MS. CHAUDHRY: Good afternoon, your Honor. Priya
12 Chaudhry and Seth Zuckerman. We're here for the defendant,
13 Irfan Amanat, who is seated between us.

14 THE COURT: This matter is on my calendar for purposes
15 of sentencing. Before proceeding further, I will address the
16 recent amendment to Rule 5 of the Federal Rules of Criminal
17 Procedure. As required by Rule 5(f), I direct the government
18 to comply with its obligations under *Brady v. Maryland* and its
19 progeny to disclose to the defense all information, whether
20 admissible or not, that is favorable to the defendant, material
21 to either guilt or to punishment and known to the government.
22 Possible consequences for noncompliance with this order may
23 include dismissal of charges, exclusion of evidence and
24 professional discipline and court sanction on the attorney or
25 attorneys responsible. I have entered a written order that

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1 more fully describes the government's obligations and the
2 possible consequences of failing to meet those obligations.
3 And I direct the government to review and comply with that
4 order.

5 Mr. Naftalis, does the government confirm that it
6 understands its obligations and has fulfilled them?

7 MR. NAFTALIS: Yes, of course, your Honor.

8 THE COURT: In preparation for sentencing, I have read
9 the revised presentence report dated June 4th, 2021. I have
10 read defense counsel's July 17th, 2021 sentencing submission,
11 as well as all of the accompanying exhibits. I have also read
12 the government's August 4th, 2021 sentencing submission. I
13 read defendant's supplemental sentencing submission filed on
14 August 12th and the accompanying exhibits. And I have read the
15 government's supplemental sentencing submission filed on August
16 16th, 2021.

17 Ms. Chaudhry, have you revised the presentence report
18 and recommendation and discussed it with Mr. Amanat?

19 MS. CHAUDHRY: I have, your Honor.

20 THE COURT: Mr. Amanat, have you read the revised
21 presentence report and recommendation and discussed it with
22 your counsel?

23 THE DEFENDANT: I have, your Honor.

24 THE COURT: Defense counsel made a number of
25 objections to the factual portions of the presentence report.

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1 These objections are set forth at Pages 25 through 28 of the
2 presentence report. In many instances the probation department
3 adopted the changes proposed by defense counsel.

4 To the extent that the probation department did not
5 make the changes requested by the defense, I will address those
6 objections now. I want to be clear that I am addressing
7 objections to the factual portions of the presentence report at
8 this point. I will discuss objections to the guidelines
9 calculations later.

10 The defense objects to Paragraph 34 of the presentence
11 report to the extent that it alleges that there was a quid pro
12 quo arrangement between Enable and KIT Digital, in which KIT
13 Digital agreed to send its spare cash to Enable in exchange for
14 Enable's investment in KIT Media. There was evidence at trial
15 that KIT Digital sent \$6.5 million of its cash to Enable for
16 cash management and that Enable had previously invested in KIT
17 Media. (Trial Tr. 511-15) While the jury could have found
18 that these matters were not unrelated, there was no explicit
19 testimony about there being a quid pro quo. Accordingly, to
20 the extent that Paragraph 34 suggests that there was a quid pro
21 quo arrangement, I will ignore that assertion.

22 The defense objects to Paragraph 43 which discusses a
23 December 18, 2008 email between Irfan Amanat and his brother
24 Omar Amanat. That email was admitted at trial. (GX 2965,
25 Trial Tr. 184-86). The grounds for the objection is that the

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1 email was sent before the onset of the conspiracy to defraud
2 Maiden Capital investors, as charged in the indictment. The
3 objection is overruled for the reasons set forth in my opinion
4 denying the Defendant's post-trial motions (Dkt. No. 1204 at
5 Pages 33-42). This email is necessary background to the
6 charged conspiracy. Moreover, at sentencing, I am of course
7 free to consider any background information concerning a
8 defendant's criminal conduct. Clearly, the objection is
9 overruled.

10 Defense counsel objects to Paragraph 46 to the extent
11 that it says that, in a March 2009 telephone call with Stephen
12 Maiden, Omar Amanat, and Tuzman, the defendant said that Maiden
13 Capital's investment in Enable was lost. Defense counsel says
14 that her client used the term "frozen." Defense counsel also
15 objects to the extent that this paragraph and Paragraph 59
16 report that Enable was insolvent. The probation officer
17 changed the word "lost" to "frozen" in Paragraph 46, but the
18 references to insolvency remain.

19 These issues are likewise addressed in the opinion
20 denying the defendant's post-trial motions. See Dkt. No. 1204
21 at p. 10 and n. 7. As discussed in the opinion, it is true
22 that Irfan Amanat reported that Maiden's investment was
23 "frozen." See id. and Trial Tr. 241. But over the next three
24 years, all the relevant parties -- Irfan Amanat, Omar Amanat,
25 Tuzman, and Stephen Maiden -- all treated Maiden Capital's

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1 investment in Enable, and KIT Digital's investment in Enable,
2 as lost. As to Maiden Capital, the lost investment was
3 referred to as the "Enable hole." See, for example, Trial Tr.
4 255-59, The Government also introduced multiple emails at
5 trial in which Omar Amanat and Irfan Amanat discussed the fact
6 that they could not repay the investors' funds that Irfan
7 Amanat had lost. See, for example, GX 2965, GX 2975 and Trial
8 Tr. 185-86. In an April 20, 2009 email from Omar Amanat to
9 Irfan Amanat, Omar commented that investors' money had been
10 lost due to "poor risk management." (GX 3069-A) A company's
11 inability to pay its obligations constitutes insolvency. The
12 objection is overruled.

13 Defense counsel objects to Paragraph 54 to the extent
14 that it states that Irfan Amanat had knowledge of the monthly
15 statements that Stephen Maiden sent out to Maiden Capital
16 investors. This issue is also discussed in the decision
17 denying the defendant's post-trial motions. The defendant
18 provided monthly statements to Maiden concerning Maiden
19 Capital's investment in Enable, and the Defendant was well
20 aware that the information he provided would be used by Maiden
21 to calculate the value of each Maiden Capital investor's
22 account each month. (Dkt. No. 1204 at 4, 9, 13) Plainly, the
23 objection is overruled.

24 Defense counsel objects to portions of Paragraph 133,
25 which discuss the defendant's prior employment at Tradescape,

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1 where he was the chief technology officer. The defendant's
2 employment at Tradescape is relevant in the sense that the SEC
3 enforcement order entered against him in 2006 arises out of his
4 work for Market XT, whose parent was Tradescape. And the SEC
5 enforcement order is a relevant consideration in imposing
6 sentence on the defendant. To the extent that Paragraph 133
7 also discusses Omar Amanat's bankruptcy, the sale of
8 Tradescape, what happened to the proceeds from the sale, all of
9 this information will be disregarded in sentencing the
10 defendant.

11 Ms. Chaudhry, do you have any additional objections to
12 the factual portions of the presentence report?

13 MS. CHAUDHRY: I do not.

14 THE COURT: Does the government have any objections to
15 the factual portions of the presentence report?

16 MR. NAFTALIS: No, Your Honor.

17 THE COURT: Except as set forth above, I hereby adopt
18 the factual portions of the presentence report.

19 I will impose sentence. In accordance with the
20 sentencing guidelines, I am required to consider what the
21 guidelines recommend. Here, the jury convicted Mr. Amanat of
22 conspiracy to commit wire fraud, wire fraud, aiding and
23 abetting investment adviser fraud, and conspiring to commit
24 securities fraud. Pursuant to the grouping rules of the
25 sentencing guidelines, the probation department grouped all

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1 four counts of conviction. The probation department imposed
2 the following enhancements to the base offense level of seven.
3 Eighteen levels were added because the probation department
4 determined that the loss amount is 9.45 million, an amount that
5 falls between the range of 3.5 million and 9.5 million set
6 forth in the sentencing guidelines.

7 The probation department imposed a two level
8 enhancement pursuant to §2B1.1(b)(9)(C) because by engaging in
9 the offense conduct, Mr. Amanat violated a 2006 SEC enforcement
10 order that required him to cease-and-desist from violating
11 §10(b) of the Securities and Exchange Act.

12 Probation department imposed a two level enhancement
13 under Section 2 B1.1(b)(10)(B) and (C) because a substantial
14 part of the fraudulent scheme was committed from outside of the
15 United States and because the offenses otherwise involved
16 sophisticated means and the defendant intentionally engaged in
17 and caused the conduct constituting sophisticated means.

18 The probation department imposed a four level
19 enhancement pursuant to §2B1.1(b)(20)(A)(ii) because the
20 offense involved a violation of the securities laws and ,at the
21 time of the offense, the defendant was a person associated with
22 a broker-dealer.

23 In the presentence report, these calculations result
24 in a total offense level of 33, .

25 The probation department went on to determine that

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1 Mr. Amanat has no criminal history points and that he thus
2 falls within criminal history category I.

3 Based on an offense level of 33 and a criminal history
4 category of I, the probation department concluded that the
5 applicable guidelines range is 135 to 168 months' imprisonment.

6 The defendant has raised a number of objections to the
7 guidelines calculation set forth in the presentence report. I
8 will address those objections now.

9 I'll begin with the loss amount enhancement. The
10 presentence report finds a loss amount of \$9.45 million. That
11 falls, as I noted, within a guidelines range of between
12 \$3.5 million and \$9.5 million, and that correlates with an
13 18-level enhancement. (PSR 79); see also id. 67.

14 The Government contends that the loss amount for the
15 Maiden Capital fraud -- Counts One through Three -- is
16 \$7.2 million representing a total loss to investors of
17 \$7.75 million minus \$550,000 that Omar Amanat wired back to
18 Maiden Capital before the fund collapsed. As to the KIT
19 Digital accounting fraud count, the government contends that
20 Irfan Amanat should be held liable for the \$2 million in KIT
21 Digital cash that was lost at Enable, and which Irfan Amanat
22 covered up over the next three years through false account
23 statements and false audit confirmations. (Govt. Sent. Br.
24 (Dkt. No. 1181) at Pages 10-13)

25 The defense contends that the proper loss amount is

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1 zero. (Def. Sent. Br. (Dkt. No. 1162) at Page 67) As to
2 Maiden Capital, Amanat argues that the collapse of the fund was
3 caused by multiple frauds committed by Stephen Maiden, and that
4 Amanat's role in the fraud was limited to providing phony
5 account statements to Maiden. (Id. at Page 59) Amanat further
6 argues that he had no "insight into the Maiden Capital
7 holdings, value, losses, gains, investors, frauds, et cetera
8 [and] had no idea what Maiden Capital was worth at any point,"
9 and contends that he "had no idea or control over what Maiden
10 did with" the account statements he sent to Maiden. (Id. at
11 Page 60).

12 I have already rejected Mr. Amanat's arguments
13 regarding his knowledge of what Maiden did with the Enable
14 account statements. As I have found, there was ample evidence
15 at trial that he understood that the phony Enable account
16 statements that he provided each month to Maiden would be used
17 to calculate the account statements that Maiden provided to its
18 investors each month.

19 As to Mr. Amanat's liability for the loss suffered by
20 Maiden Capital investors, it is reasonable to hold him
21 liable -- like his brother -- for the total loss suffered by
22 Maiden Capital investors, \$7.75 million. It was foreseeable to
23 Mr. Amanat that Maiden Capital's loss of its \$3 million
24 investment in Enable would lead to the total collapse of the
25 fund, because he was aware that this investment constituted a

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1 quarter of the fund's total assets.

2 I want to emphasize at the outset that the Maiden
3 Capital fraud was the direct result of Irfan Amanat's loss of
4 Maiden Capital's \$3 million investment. He was not a bystander
5 to this fraud or a minor player as the defense contends.
6 Instead, he was the percipient cause of the fraud and the "but
7 for" cause of the fraud in the sense that his conduct
8 necessitated the fraudulent cover-up over the next three years
9 that was perpetrated by him, his brother, Omar Amanat, and by
10 Stephen Maiden.

11 The evidence at trial showed that Irfan Amanat was
12 aware that Maiden Capital was a small fund and that Maiden's
13 investment in Enable represented a significant portion of the
14 fund's assets. (See Trial Tr. at 176-178 (Maiden testifying
15 about a November 21, 2008 email he sent to Irfan Amanat in 2008
16 after investing funds in Enable, in which he wrote: "Hey,
17 Irfan, can you please send me your full contact info. It has
18 been tough to get in touch with you this week. Now I partly
19 understand why, which is alarming, since I have three million
20 with your fund, about one quarter of my whole fund. While
21 two million is temporary, please go above and beyond to
22 communicate with me closely as my business is really at risk in
23 that capital.") See also GX 1515.

24 Accordingly, Maiden made clear to Irfan Amanat -- at
25 the very outset of the relationship -- that Maiden Capital's

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1 investment in Enable constituted a large percentage of his
2 fund's total assets, and that the size of that investment meant
3 that Maiden Capital itself was "at risk" in making such a large
4 investment in Enable. Accordingly, it was foreseeable to Irfan
5 Amanat that the disclosure that Maiden Capital's \$3 million
6 investment in Enable had evaporated, and that that loss was
7 fraudulently covered up for the next three years, would lead to
8 the collapse of Maiden Capital and a total loss for its
9 investors. Accordingly, as with Omar Amanat, it is reasonable
10 to hold Irfan Amanat responsible for the full \$7.75 million
11 loss suffered by Maiden Capital investors.

12 I note that the government credits Irfan Amanat for
13 \$550,000 that Omar Amanat wired to Maiden to help him keep
14 Maiden Capital afloat prior to its collapse in 2012. (Govt.
15 Sent. Br. (Dkt. No. 1181) at Pages 10-13) But as I pointed out
16 in a loss amount opinion that I issued concerning Omar Amanat,
17 Maiden testified that at the time of his fund's collapse in
18 2012, he owed his investors \$7.75 million. (July 29, 2021
19 Opin. (Dkt. No. 1179) at Pages 33-34 (citing Trial Tr. 1168))
20 Accordingly, even after the \$550,000 that Omar Amanat wired to
21 Maiden is taken into account, the collapse of Maiden Capital
22 resulted in a \$7.75 million loss to its investors.

23 As to the KIT Digital accounting fraud, Irfan Amanat
24 repeatedly submitted false audit confirmations indicating that
25 Enable was holding \$2 million of KIT Digital's cash. This was

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1 false. Acknowledging that Irfan Amanat did not have knowledge
2 of unrelated accounting fraud ongoing at KIT Digital --
3 including a very significant round tripping scheme -- Irfan
4 Amanat was aware that KIT Digital's \$2 million in cash had been
5 lost and that it was wrong and fraudulent for him to represent
6 to KIT Digital's outside auditors that Enable was in fact
7 holding \$2 million in cash for KIT Digital. Accordingly, it
8 was foreseeable to Irfan Amanat that his conduct would result
9 in a \$2 million loss to KIT Digital investors. I conclude that
10 the loss amount as to the KIT Digital accounting fraud charge
11 as to Mr. Amanat is \$2 million.

12 At this juncture, I will also point out that
13 Mr. Amanat's objection to the government's \$7.2 million loss
14 amount on Counts One, Two and Three is largely a moot point.
15 Maiden Capital invested \$3 million in Enable (Aug. 30, 2021
16 Opin. (Dkt. No. 1204) at Pages 3, 6) all of which was lost.
17 Irfan Amanat spent the next three years covering up that loss,
18 issuing phony account statements to Maiden, which he knew that
19 Maiden would use as the basis for the monthly statements Maiden
20 was sending out to Maiden Capital investors. Indeed, as late
21 as 2012, Irfan Amanat was still sending out account statements
22 to Maiden indicating that Maiden Capital's holdings at Enable
23 amounted to \$2.5 million. (GX 1735) From the \$3 million that
24 Maiden Capital invested in Enable and which was lost, one may
25 subtract the \$550,000 that Omar Amanat wired to Maiden to

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1 forestall the collapse of Maiden Capital. Accordingly, looking
2 solely at Maiden Capital's lost investment in Enable, the loss
3 amount for Counts One, Two and Three would be \$2.45 million.
4 Combined with the \$2 million loss amount applicable to the KIT
5 Digital accounting fraud, the most conservative loss amount is
6 \$4.45 million, which falls within the \$3.5 million to
7 \$9.5 million range that leads to an 18 level enhancement.

8 To the extent that Amanat argues that *Stoneridge*
9 *Investment Partners LLC v. Scientific-Atlanta, Inc.*, 522 U.S.
10 148 (2008) and *Janus Capital Group, Inc. v. First Derivative*
11 *Traders*, 564 U.S. 135 (2011) require a different result, I am
12 not persuaded. Neither case addresses the calculation of loss
13 for purposes of the sentencing guidelines. *Stoneridge*
14 addresses the reach of the private right of action under §10(b)
15 and Rule 10(b)(5). *Janus* addresses a private action under Rule
16 10b-5, and whether a mutual fund investment adviser could be
17 found liable for statements made in a client's prospectus. I
18 don't find these cases persuasive for purposes of calculating
19 loss amount here.

20 Accordingly, I conclude that the loss amount for all
21 counts of conviction, conservatively estimated, would be at
22 least \$4.45 million, which correlates with an 18 level
23 enhancement. The more accurate loss amount -- and the amount I
24 will apply -- is \$9.75 million, reflecting the \$7.75 million
25 loss suffered by Maiden Capital investors and the \$2 million

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1 loss suffered by KIT Digital investors. Under §2B1.1(b)(1)(K)
2 of the sentencing guidelines, a loss amount of \$9.75 million
3 results in a 20 level increase.

4 Now, I want to mention tangentially at this point
5 that, while I am required under the law to conduct this
6 extensive analysis of loss amount, I'm keenly aware of the
7 criticism of the sentencing guidelines' loss provisions and the
8 affect they can have on a proper sentencing. And I'm acutely
9 sensitive to that point. And the fact that I have gone through
10 this level of analysis should not in any way indicate that the
11 sentencing here is going to be premised on loss amount. I am
12 required under the law to conduct this analysis. However, I
13 have freedom under the law to vary from the guidelines range.

14 The PSR imposes a four-level enhancement under
15 §2B1.1(b)(20)(A)(ii) of the Sentencing Guidelines because the
16 defendant's offense involved a violation of the securities laws
17 and, at the time of the offenses, the defendant was associated
18 with a broker-dealer. (PSR 82)

19 Defense counsel objects to this enhancement, arguing
20 that Irfan Amanat was not in fact associated with a
21 broker-dealer.

22 The government agrees that the four-level enhancement
23 is improper noting, among other things, that there is no
24 evidence that Enable purchased securities on behalf of KIT
25 Digital. (Govt. Sent. Br. (Dkt. No. 1181) at Pages 8-9)

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1 Accordingly, defendant's objection to Paragraph 82 of
2 the presentence report is sustained, and no four-level
3 enhancement will be imposed.

4 The PSR imposes a two-level enhancement because a
5 substantial part of the fraudulent scheme was committed from
6 outside the United States and because the offense involved
7 sophisticated means. (PSR 81)

8 Mr. Amanat objects to this two-level enhancement,
9 arguing that although he operated from Dubai between 2008 and
10 2010, he returned to the United States in 2010. He also argues
11 that he merely sent out phony account statements and that this
12 conduct was not sophisticated in any way. (Def. Sent. Br.
13 (Dkt. No. 1162) at Pages 46-50)

14 As discussed in the opinion denying the defendant's
15 post-trial motions, the fraudulent schemes in which Mr. Amanat
16 participated were quite complex, as suggested by the fact that
17 the conspirators continued to keep the fraud going for more
18 than three years. For years, Irfan Amanat constructed
19 completely phony account statements each month purporting to
20 show the value of Maiden Capital's investment in Enable. The
21 Amanat brothers were also running what was, in effect, a Ponzi
22 scheme, robbing Peter to pay Paul. For example, they induced
23 Maiden to invest \$2 million in additional funds in Enable,
24 characterizing it as a short term loan needed as "show money,"
25 to induce another investor to make a significant investment in

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1 Enable. After obtaining the \$2 million from Maiden, they
2 immediately used Maiden Capital's investment to redeem KIT
3 Digital's investment in Enable. And as time passed and Maiden
4 Capital began to see redemption requests, Omar Amanat arranged
5 for more than \$500,000 to be wired to Maiden so that he could
6 satisfy the redemption requests and thus forestall discovery of
7 the fraud. And throughout the more than three-year period of
8 these fraudulent schemes, the conspirators had countless
9 discussions about how to cover the "Enable hole," deciding
10 eventually that the solution was the sale of KIT Digital. The
11 false audit confirmations that Mr. Amanat supplied to KIT
12 Digital's outside auditors also served the Maiden Capital
13 fraud, in the sense that they assisted in making KIT Digital's
14 financial condition look more favorable than it actually was,
15 thus making the company a more attractive candidate for
16 purchase. Accordingly, the two-level sentencing enhancement is
17 warranted pursuant to 2B1.1(b)(10)(C) for use of sophisticated
18 means.

19 The evidence at trial also showed that a substantial
20 part of the fraudulent scheme was committed from Enable's
21 headquarters in Dubai. Mr. Amanat was based in Dubai between
22 2008 and 2010 when key developments in the fraud schemes took
23 place. See Trial Tr. Pages 93-95. During these early years,
24 Mr. Amanat provided the phony account statements to Maiden from
25 Dubai. It is also worth noting that Mr. Amanat's move to Dubai

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1 took place in or about 2007. (PSR Paragraphs 128–29) The SEC
2 issued a cease-and-desist order -- which imposed a five-year
3 ban on Amanat -- on November 3, 2006. Although Amanat
4 attributes his move to Dubai to anti-Muslim sentiment in the
5 United States and to the fact the cost of living is less in
6 Dubai (Def. Sent. Br. (Dkt. No. 1162) at 26), it is reasonable
7 to infer that the move was, at least in part, an attempt to
8 escape US law enforcement and regulators. In any event, the
9 phony account statements Mr. Amanat generated for several years
10 in Dubai were crucial in perpetrating and maintaining for three
11 years the scheme to defraud Maiden Capital investors.

12 Accordingly, the two-level enhancement is also warranted
13 pursuant to §2B1.1(b)(10)(B).

14 The PSR imposes a two-level enhancement pursuant to
15 §2B1.1(b)(9)(C) of the sentencing guidelines because, in
16 committing the offense conduct, Mr. Amanat violated an SEC
17 enforcement order issued in November 2006. (PSR 80)

18 Defense counsel objects to the enhancement, arguing
19 that Mr. Amanat was not associated with a broker-dealer and
20 that he was convicted of conspiracy to violate §10(b), and not
21 of a substantive §10(b) violation. (Def. Supp. Sent. Br. (Dkt.
22 No. 1193) at 10)

23 §2B1.1(b)(9)(c) of the Guidelines provides: "If the
24 offense involved (C) a violation of any prior, specific
25 judicial or administrative order, injunction, decree, or

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1 process not addressed elsewhere in the guidelines increase by 2
2 levels."

3 The 2006 SEC enforcement order against Irfan Amanat
4 provides, in part, that he "cease-and-desist from committing or
5 causing any violations or future violations of §10(b) or Rule
6 10b-5 of the Securities Exchange Act of 1934." (See Def. Supp.
7 Sent. Br., Ex. C (Dkt. No. 1193-3) at PAge 25)

8 Mr. Amanat argues that because the government
9 conceded -- for purposes of the four-level enhancement I
10 discussed a moment ago -- that Amanat was not associated with a
11 broker-dealer, the two-level enhancement for violating the SEC
12 enforcement order is not applicable. (Def. Supp. Sent. Br.
13 (Dkt. No. 1193) at 10) This argument is not persuasive,
14 because the defendant does not have to be associated with a
15 broker-dealer for the two-level enhancement to apply.

16 Count Six of the Indictment charges Mr. Amanat with a
17 conspiracy to commit securities fraud, and alleges that, in
18 furtherance of the alleged conspiracy, he repeatedly supplied
19 KIT Digital's auditors with false and fraudulent audit
20 confirmations regarding the amount of cash that Enable was
21 holding for KIT Digital, knowing that this information would be
22 cited in the company's Form 10-K filings.

23 I conclude that Mr. Amanat participated in the charged
24 conspiracy to commit securities fraud and that his conduct
25 violated the 2006 enforcement order.

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1 Accordingly, the two-level enhancement pursuant to
2 §2B1.1(9)(C) is properly imposed.

3 Mr. Amanat contends that his offense level should be
4 reduced by four levels because he was a minimal participant in
5 the offenses of conviction. (Def. Sent. Br. (Dkt. No. 1162) at
6 Pages 50-55)

7 If Mr. Amanat had been convicted only of the KIT
8 Digital accounting fraud, it is possible that a role in the
9 offense reduction might be appropriate. There was an ongoing
10 and very complex accounting fraud conspiracy taking place at
11 KIT Digital, most of which was not known to Mr. Amanat. In
12 particular, the company's CEO and CFO were engaged in a complex
13 round tripping scheme that involved moving around the company's
14 money to make it look like the company was generating
15 significant amounts of revenue. In this context, Mr. Amanat's
16 false and fraudulent audit confirmations regarding \$2 million
17 in cash were a small part of a much larger accounting fraud
18 conspiracy.

19 But in determining whether a role in the offense
20 reduction is appropriate, I am to consider the aggregate
21 conduct. Accordingly, I must consider all of the offenses of
22 conviction grouped together, the Maiden Capital fraud together
23 with the KIT Digital fraud. (U.S.S.G. §3D1.3(b) and cmt. n. 3.

24 As I have already discussed, Mr. Amanat's role in the
25 Maiden Capital fraud was much more significant. Indeed, he was

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1 the but-for cause of the fraud, in the sense that his loss and
2 diversion of the money Maiden Capital put into Enable led to a
3 more than three-year coverup and the ultimate collapse of
4 Maiden Capital.

5 Commentary to §3B1.2 of the Guidelines provides that a
6 "minimal participant" designation is intended to cover
7 defendants who are plainly among the least culpable of those
8 involved in the conduct of a group. Under this provision, the
9 defendant's lack of knowledge or understanding of the scope and
10 structure of the enterprise and of the activities of others is
11 indicative of a role as minimal participant." Citing U.S.S.G.
12 §3B1.2, cmt. n. 4.

13 In determining whether to grant a role in the offense
14 reduction, the court considers:

15 (i) the degree to which the defendant understood the
16 scope and structure of the criminal activity;

17 (ii) the degree to which the defendant participated in
18 planning or organizing the criminal activity;

19 (iii) the degree to which the defendant exercised
20 decision-making authority or influenced the exercise of
21 decision-making authority;

22 (iv) the nature and extent of the defendant's
23 participation in the commission of the criminal activity,
24 including the acts the defendant performed and the
25 responsibility and discretion the defendant had in performing

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1 those acts;

2 (v) the degree to which the defendant stood to benefit
3 from the criminal activity.

4 Citing U.S.S.G. §3B1.2, cmt. n. 3(C).

5 The Second Circuit has explained that a "minimal" role
6 adjustment is appropriate for a defendant who is "plainly among
7 the least culpable of those involved in the conduct of a
8 group," and a "minor" role adjustment is appropriate for a
9 defendant "who is less culpable than most other participants."
10 On numerous occasions the Second Circuit has reiterated that a
11 reduction pursuant to U.S.S.G. §3B1.2 will not be available
12 simply because the defendant played a lesser role than his
13 co-conspirators. To be eligible for a reduction, the
14 defendant's conduct must be minor or minimal as compared to the
15 average participant in such a crime. *United States v. Kirk*
16 *Tang Yuk*, 885 F.3d 57, 88 (2d Cir. 2018)

17 As discussed in the opinion denying Mr. Amanat's
18 post-trial motions (Aug. 30, 2021 Opin. (Dkt. No. 1204), he was
19 a central and full participant in the Maiden Capital fraud
20 conspiracy and he had an understanding of its full scope.
Indeed, as I have pointed out, the fraud conspiracy against
Maiden Capital was in large part designed to protect Mr. Amanat
and Enable both from civil suits and possible criminal fraud
charges. His fabrication each month of the fraudulent account
statements was critically important to the fraud scheme. And

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1 his emails with his brother make clear that he fully understood
2 the criminal nature of his actions.

3 I conclude that no role in the offense reduction is
4 appropriate.

5 Does the defendant have any additional objections to
6 the guidelines calculations?

7 MS. CHAUDHRY: We do not.

8 THE COURT: Does the government have any objections to
9 the accuracy of the guidelines calculations as I have reported
10 them?

11 MR. NAFTALIS: No, your Honor.

12 THE COURT: Based on my independent evaluation of the
13 sentencing guidelines, I find that the offense level is 31, the
14 criminal history category is I , and the applicable guidelines
15 range is 108 to 135 months' imprisonment.

16 I'd hear from you Ms. Chaudhry as to an appropriate
17 sentence.

18 MS. CHAUDHRY: Before I begin my remarks, I would like
19 to introduce the people who are here in this courtroom, the
20 people who are downstairs in the overflow courtroom and the
21 people on the phone. I won't list everyone, since many of them
22 are minor children and I don't want their names in the
23 transcript. But I want the Court to know that here are
24 Mr. Amanat's mother, his sister, three of his children, his
25 ex-wife, her brothers, many people the Court has already heard

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1 from through letters, and cousins and people who love him all
2 over the world listening on the phone. And on behalf of all of
3 those people, they have asked me to express their greetings,
4 salutations and gratitude to the Court.

5 Your Honor, when I first met Irfan in the summer of
6 2019, I made the same mistake as everyone else and
7 mispronounced his last name. Polite, respectful and shy Irfan
8 did not correct me. But a few days later when I spoke to his
9 father, Sharif, he introduced himself as Dr. Amanat. I was
10 stunned. Because I know the meaning of the word "amanat" in
11 Urdu. It's a special word that has no English equivalent, but
12 I'll do my best to translate it. Amanat means availment of
13 something that is very precious to its owner and is given to a
14 faithful person to keep it safe. But more than that, the owner
15 believes that the one to whom he gives his valuable treasure,
16 his amanat can take better care of it than the owner himself.

17 In July of 2019, a very sick and dying Sharif said to
18 me, Irfan is your amanat now, Priya. I trust you to take care
19 of him. Please bring him home. His mother needs him. Soon
20 after I promised Sharif that I would in fact treat Irfan as my
21 amanat, Sharif's health took a turn for the worst and I was
22 never able to speak with him again. And then eight months
23 later, the entire world took a turn into an unimaginable
24 apocalypse. And since then, my promise to Irfan's father has
25 swollen steadily as all of our world's have shrunk.

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1 Since March of 2020, Irfan experienced the worst of
2 our collective COVID nightmare as a prisoner at the MDC. From
3 March 2020 until May 2021, Irfan did not see a single soul from
4 the outside world; not a smile from a child, not a handshake
5 from a cousin, not the soft eyes of his beloved mother. In
6 fact, today is the first time any of the people who love Irfan
7 have seen him since before COVID became part of the global
8 vocabulary.

9 Irfan has survived all of the horrors and terrors of
10 COVID completely alone. During those 14 months, I was only
11 able to speak to Irfan on the phone, as even lawyers were not
12 permitted in the MDC. The human voice is amazing. It tells
13 the truth, speaks our stories when words fail us. Irfan's
14 words during those months were of his dying father, his
15 broken-hearted mother, his fatherless children, and the hell
16 they were living and dying through. But his voice betrayed his
17 own terror. His day and night fear of whether he would
18 survive, and if he did survive, would he be permanently mangled
19 as a person for what he had seen.

20 More than once, Irfan told me he hoped he would not
21 survive this. And his voice told me that he meant it. His
22 voice, through the many tears, spoke of his shame and regret,
23 despair, self-loathing and guilt. I once asked Irfan why he
24 believed he was in jail. And his answer was, because I'm weak,
25 because I didn't stop that monster when I was 12, I didn't save

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1 my brothers and cousins. And now that I'm a man, I'm still
2 weak. I was too afraid to do the right thing then and too
3 afraid to do the right thing now. And then he said that he
4 believed he deserved all of the suffering he has endured. He
5 just wished he could have spared the people he loves.

6 What pained Irfan the most was that he could not, for
7 once in his life, sacrifice himself to save someone he loves.
8 He could not save his father, comfort his mother, help his
9 children, take the burden from his sister's shoulders or
10 protect his younger brother Omar. Many times during that black
11 year, Irfan asked me to ask you, your Honor, if he could
12 exchange his own life for Omar's freedom.

13 While the MDC walls and COVID kept him away from his
14 father's death bed, Irfan was desperate that his mother not
15 face this devastation alone. And so he asked me if we could
16 offer that Irfan serve a decade in prison so that Omar could be
17 released even for a week to be with their mother. Irfan loves
18 his mother more than anything in the world, and he knows that
19 his mother has a special soft spot for Omar. And he was
20 willing to sacrifice himself to give his mother the shoulder of
21 her special son to cry on during their father's funeral. And
22 that is who Irfan is. Sacrifice defines him.

23 Also, Omar defines him. Last month, this court heard
24 Omar and correctly said that he has been spectacularly
25 successful. That is true and has always been true. This court

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1 is required to compare these brothers in order to determine
2 what sentence would be appropriate for each. But they have
3 been compared to each other their whole lives. Omar is
4 talented, bold, larger than life, wildly generous, and
5 sometimes just wild. Omar is super models, movie stars and
6 private jets. Irfan is TI85 calculators, jokes about the solar
7 systems and dad jeans. Omar is Icarus and Irfan is his older,
8 nerdy brother. In this story, when Icarus flew too close to
9 the sun, his older brother leapt upon him, and they both came
10 crashing to the ground and destroyed themselves.

11 As the government concedes, Irfan is less culpable
12 here than Omar. And we hope the Court agrees and that the
13 Court's sentence reflects that.

14 Since May of 2021, Irfan has only seen his lawyers.
15 And what we have seen is a fraction of the man that we met. He
16 has lost over 20 pounds, gained about 20 years, and all but
17 given up hope as anyone living in the heart of darkness that is
18 the MDC would do. On the final judgment in this case, your
19 Honor will write a few words or numbers which are supposed to
20 define the punishment for Irfan. But the real punishment will
21 not be written on the judgment here. It can never be. Irfan's
22 real punishment has been missing the lives of his children,
23 failing to fulfill his duty to god at his father's death bed.
24 Each tear his mother has shed because of him, those tears have
25 been drowning Irfan for three years. Irfan's lifelong

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1 punishment will begin the first time he walks into his
2 childhood home and sees his father's empty chair and his own
3 missing wedding ring. Irfan's actions cost him his father and
4 his wife; two of the biggest loves of his life. That is the
5 unwritten part of his sentence.

6 Irfan's actions cost him three years of fatherhood to
7 his beloved four children. That is the unwritten part of his
8 sentence.

9 His heart is broken, and he has broken the hearts of
10 everyone in this room and the room downstairs and on the phone
11 and one particular heart in heaven watching over Irfan still.
12 That is the unwritten part of his sentence.

13 Now, Irfan wishes only to be there until the last
14 breath of the woman who was there for his first breath. From
15 this moment on, Irfan is your amanat, your Honor. His father
16 entrusted him to me. And now, I entrust him to you. I ask you
17 to permit this man to return home today so that he can spend
18 the rest of his life taking care of his mother and being a
19 father to his children. Thank you.

20 THE COURT: I'll hear from the government.

21 MR. NAFTALIS: Thank you, your Honor.

22 I'll only say a few things, because your Honor is very
23 familiar with this case, including as expressed in its thorough
24 opinions recently. We recognize the new guidelines range. And
25 we stand by our view that Mr. Amanat is less culpable than his

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1 brother Omar. But we still do not believe that a sentence of
2 time served is appropriate here. A significant prison sentence
3 remains appropriate.

4 Your Honor has already addressed many of the arguments
5 that I'll make. First, the defendant engaged in two serious
6 fraud schemes. And it's somewhat ironic that his last name I
7 now know stands for bailee, which brings me back to law school,
8 when you trust someone with property or money, you become a
9 bailor, I guess it is. That's what happened here. That's what
10 Enable was. It was an investment fund. And he betrayed that
11 trust and destroyed Maiden and Maiden Capital and lied about it
12 for years. And your Honor has cited all the ways in which he
13 knew exactly what he was doing, that he was not an innocent
14 bystander.

15 And of course, there was the KIT Digital fraud, where
16 he continued to lie to people, including KIT Digital investors
17 which entrusted their money to KIT Digital, and they too were
18 left with huge losses. The defendant was not an innocent
19 bystander, as your Honor said. He was an integral part of this
20 scheme, though less culpable than Mr. Tuzman and his brother.
21 But millions of dollars went to waste and thousands of people
22 lost their job as a result.

23 Second, the defendant has already violated the
24 securities laws. His SEC ban went into effect shortly before
25 this scheme began. And he moved to Dubai. He knew full well

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1 he should not be lying to people, ripping them off or violating
2 securities laws. And instead, he repeated his offenses not
3 once, but twice.

4 And the last point I'll make, your Honor, is while
5 Ms. Chaudhry's remarks to the Court were well done, what
6 continues to be missing throughout these papers is any
7 acceptance of responsibility or apologies for the destruction
8 left in the wake of the defendant's crimes. He is not weak.
9 He is not afraid to do the right thing. He may not be as showy
10 as Omar, but he's clearly intelligent and knew exactly what he
11 was doing. And it's sad that he wasted all of his skills and
12 promise helping his brother commit crimes, but that's why we're
13 here and that's what happened. Thank you, your Honor.

14 THE COURT: Mr. Amanat, is there anything you wish to
15 say before the Court imposes sentence?

16 THE DEFENDANT: Yes, I do, your Honor, Judge Gardephe,
17 if you can hear me clearly.

18 Judge Gardephe, thank you for the opportunity to speak
19 and thank you to everyone here to support me. Your Honor,
20 since this is my first time addressing the Court. I'd like to
21 begin by fully apologizing to those I've hurt. I acknowledge
22 what Mr. Traceer said, and he's right. I lost money. And so
23 to the investors and the investors' families and to my family
24 and friends, I am profoundly sorry. I never intended to cause
25 anyone harm. But I know that I have. And I make no excuses

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1 because there is none.

2 I will continue to grapple with the guilt and
3 consequences of my acts for the rest of my life. That fact
4 that I did cause harm to people, it pains me. It's not who I
5 wanted to be. Because growing up, I simply wanted to help
6 people. I mean, as a child, I was just terrible at sports, but
7 I was fascinated by science, science fiction, Star Wars and
8 Star Trek, but more fascinated with the possibility of helping
9 science, of having science to help people, to improve other
10 people's lives.

11 And at graduate school, my biomedical research, which
12 I choose, was in rehabilitation, rehabilitative engineering and
13 in prosthetics and on helping people with disabilities like
14 Parkinson's, who couldn't use computers, couldn't use a
15 keyboard or a mouse. And I wanted them to share what I
16 enjoyed, just like I remember sharing my computer and my
17 telescope with all my cousins. I enjoyed that. I did.

18 I transitioned into finance at the request of my
19 brother and father. I thought it was for a semester or two
20 before I went on to continue for my Ph.D. But there, again, I
21 enjoyed building software to help small investors. Those who
22 know me can attest, I never splurged on fancy cars, clothes or
23 watches. I was happiest living in my childhood home, taking
24 care of my parents and my children and all of my nephews and
25 nieces. Happier taking them to the playground or 7-Eleven than

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1 to any five star hotel or fancy restaurant. My idea of luxury
2 was time. It was time having a cup of coffee at Dunkin Donuts
3 with a friend or a family member or the time to be able to take
4 my friends or their friends to Comic Con, even if I didn't go
5 in, I was happy to take that time. My goal was always to help
6 people and put a smile on their faces.

7 It crushes me that I have fallen so far short of that
8 goal that I had as a kid. I went astray. It was my own
9 actions and mistakes that have led me here to prison. I know
10 that.

11 And it's still difficult to speak of my time in
12 prison. My lawyer has spoken to the truth of it. But I have
13 to speak about what that time meant to me. Everyone at MCC and
14 MDC went through hardships, not just me. And I feel for all of
15 them. But the hardships changed me, you know, my dreams, the
16 sign of a soul yearning for a future or thinking back to the
17 past, those were a luxury. It was a waste and an illusion as
18 well because only the stark reality of the present, the
19 responsibilities of your own life mattered at MDC.

20 But the truth is, I failed. I failed my most
21 important responsibilities. I was not the kind of father I
22 wanted to be. I'm sorry. I just haven't seen them in years.
23 They're standing just a few feet away from me right now. It's
24 the first time I've seen them in two years. There are light
25 years of missing time between us. I missed my daughter's 18th

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1 birthday last month, where every father should be. And two
2 years ago, I wasn't at college to move my son into his college
3 dorm, where I always wanted to be since he was a kid. And my
4 youngest two, I love to death. They used to fight with each
5 other to see who I would carry out of the car when they used to
6 pretend to be asleep, and so I would happily carry both of them
7 at the same time. But now, today, I don't know, they've grown
8 so much, I don't know if I can carry one of them. I know over
9 the past two years, I wasn't there to comfort them during their
10 imagined and all too real nightmares that they had and the
11 world had. I failed to shelter them from the storm.

12 And it's not just my fatherhood I failed. I wasn't
13 the type of husband or son I wanted to be when I grew up. Last
14 year, my wife of 20 years filed for divorce, which I fully
15 understand and accept. She had to struggle courageously by
16 herself. I could not support her. And despite that, I
17 appreciate her and her brothers being here today.

18 But then, also, last year, after she filed for
19 divorce, just almost exactly a year ago, or just a few weeks
20 after that, my father passed away, just a few days after his
21 birthday. And that I still have a hard time accepting. It's
22 going to be impossible to convey the depths of my grief because
23 he was truly a kind and a decent man. The memory of him is not
24 enough. To recall him is to recall his humanity, his spirit
25 and his smile. My earliest memories of him, it may be arcane,

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1 but I was confused to the difference between hydrocarbon and a
2 carbohydrate, and he explained it to me. And then he also
3 taught me of humanity. He was kindest to the person who was
4 being meanest to him. I didn't understand that at the time.
5 Or just him being a dad. One of my earliest memories of him is
6 just sitting next to him watching his favorite movie, It's A
7 Wonderful Life -- people don't remember it now -- but the whole
8 family used to gather around and watch it for Christmas; one of
9 my friends remembered it. That's the things he taught me;
10 science, humanity and how to be a dad. But now, my father's
11 memories in my dreams wind up with me shedding tears.

12 One my greatest regrets is that I was not there to say
13 good-bye to my father or grieve beside my mother and sister and
14 children as I should have, as I was supposed to. And even
15 though my brother -- whatever differences I had -- he was at
16 MDC, just one floor above me, I know, in solitary, we might as
17 well have been on different planets. We could not give comfort
18 or solace to each other.

19 My mother once told me how she felt when her father
20 passed away. She told me very simply. She said, it felt like
21 the sky had been split apart and the sky was torn. I didn't
22 know what she was talking about then, but I know what she means
23 right now.

24 So I know my actions have involved all sorts of
25 shredding and shedding of tears, of illusions and of the

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1 fantasy that I would never hurt someone, let alone the people I
2 love. But I have hurt them.

3 So I ask myself in prison again and again, how is it
4 that I know something like this will not happen again? How do
5 I know that for sure? And there's only one answer and only one
6 word, and that answer is love.

7 I know how -- now that word has actually slipped from
8 my lips -- how embarrassing it's hanging over here in the
9 courtroom. I imagined it for the past two days. Because the
10 word has been overused and abused for a millenia. But I'm not
11 speaking the fairytale dreams of love. I'm talking the
12 reality. I'm talking of the love spoken in the scriptures and
13 the psalms. The love which makes the heart bleed. The love
14 that requires hard work, time, patience and sacrifice, which
15 requires tangible acts with your hand and often -- all too
16 often -- pain. And it may be strange a realization of the
17 importance of love came in prison, which is completely devoid
18 and barren of it.

19 And I'm a scientist and I know. Just as you need the
20 total darkness of the darkest night sky to be able to open your
21 pupils fully to see the light from the distant stars, the heart
22 needs suffering in order to expand fully, in order to
23 understand, accept and give love. Because only when you suffer
24 and accept pain do you know you truly love someone.

25 Regarding the heart suffering, I know, the Bible in

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1 Romans says, rejoice in your suffering and afflictions. In the
2 Quran it says ask for the burdens that you can bear. And the
3 Sufi faith says simply, god breaks your heart again and again
4 and again and again until it remains open.

5 So it is with a broken and open heart that I fully
6 know and I fully say that I love my children, my mother, my
7 sister, my brother, my entire family, my nephew, my nieces, my
8 cousins, my uncles, my aunts, my friends. My friends are the
9 community of souls who chose to and stayed by my side during my
10 suffering and affliction, as they suffered themselves because
11 of me, but whose side I want to stand by during their time of
12 suffering and affliction. I want to join and remain with them
13 all. I want to be by my friends' side when they need me. I do
14 not want to miss my children as they grow up. And I will not
15 miss my mother in the twilight of her years. I will not. For
16 that love, I know I will not come back here.

17 I also know I will spend the rest of my life working
18 to heal the rifts I have caused. Because loving them doesn't
19 mean forgetting the past. But it means remembering and healing
20 the wounds we each cause and carry by carrying and caring for
21 each other.

22 Three years ago, on the eve of the trial, just before,
23 I took my children, my friends, their children to see the solar
24 eclipse that happened in America. I wanted them, I needed them
25 to experience it all and have that memory with me. And to my

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1 daughter, I explained a scientific fact about the moon. You
2 know, compared to the sun, the moon is tiny and insignificant.
3 It's a pebble compared to Everest. In fact, the moon is 400
4 times smaller than the sun, but it's also 400 times exactly
5 closer to us on Earth, to people. And that closeness, that
6 proximity to humanity, that's what makes the moon appear as
7 large as the sun. You can see it during the eclipse.

8 In that same way, I ask for that closeness to my
9 children, my family, my friends, to join them. And in that
10 shared closeness and rejoicing and suffering to let my heart
11 expand to encompass theirs and theirs to encompass mine. And
12 with that and their sacrifice -- with their sacrifice, love and
13 support, I hope to become a helpful and loving member of
14 humanity that my parents taught me to be.

15 So I thank you, your Honor, and the Court for your
16 time and patience in listening and understanding during the
17 entire trial, including everything that's been said about me;
18 the good and the bad that I did. I am sorry this is how you
19 got to meet and to know me. But I promise to you to be a
20 better man, better father, better friend and a better son.

21 Most importantly, I again express my deep sorrow and
22 ask for forgiveness to investors that I had harmed, to
23 investors who were misled by me and others and lost money.
24 There is a pain in my heart because of that, because my own
25 father had, in the 90s, lost money by a broker of his accounts.

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1 And I know the investors experienced that same pain my father
2 did. I am truly sorry.

3 I also apologize to my children and their brave
4 mother, who is here, for the pain I caused and I could not
5 protect them from. Their resilience is incredible. I don't
6 know if I had faith in it. But they had it. My son was in
7 high school when I came to prison, and he's already halfway
8 through college on his own. And my daughter on her own won a
9 scholarship to University of Minnesota. Their mother managed
10 all of this on her own. I am humbled and proud of them. Their
11 courage and perseverance inspires me to be a better father.

12 To my friends and family who are here and are
13 listening and their sacrifice for me and giving their support,
14 thank you so much. Your incredible letters -- which I just
15 read two months ago for the first time -- their letters brought
16 light to my dark prison cell. And all the children who wrote
17 the letters, especially, I don't know if I want to say their
18 names in court, but I know all their names by heart, I say it
19 every night. Everyone who wrote those letters, especially the
20 children, the fact that they remember me means more to me than
21 any Forbes list or anyone else. So I ask all of you to forgive
22 my mistakes for hurting you, for letting you down instead of
23 picking you up, because -- I'm sorry, I didn't write this
24 down -- but I wanted to mention my earliest memory, actually my
25 first memory, the first prayer that my parents taught me, it's

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1 a simple prayer. It may seem silly. But when you translate it
2 and in every book I've ever read it, it basically says, in the
3 name of god, the most gracious, the most merciful. And I
4 didn't understand that. I mean, I know, even as a kid, I
5 understood merciful. But I didn't understand gracious. I
6 thought it meant elegant or someone who had good table manners,
7 said thank you or please. So I asked my dad. And you know, my
8 English was better than his. He was an immigrant. But he
9 understood things better than me always. And he explained it
10 to me simply that mercy is forgiving someone who fully deserves
11 it. And graciousness is not -- it's wrong, it's grace -- it's
12 forgiving someone if they fully don't deserve it.

13 And I just remembered that a few hours ago, because I
14 was struggling to decide what defines my father and the eulogy
15 I wanted to give to him. I couldn't think of it. And it hit
16 me now, my father had grace. So I know I need to ask everyone,
17 everyone -- investors I harmed, the family and friends I let
18 down, the Court and the government for the time I'm taking
19 right now -- I ask for everyone's mercy and I also ask for
20 everyone in god's grace. Thank you, your Honor.

21 THE COURT: In deciding upon an appropriate sentence,
22 I have considered all the factors listed in Title 18 United
23 States Code §3553(a), including the nature and circumstances of
24 Mr. Amanat's offenses, his personal history and
25 characteristics, the need for the sentence imposed to reflect

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1 the seriousness of his offenses, the need to promote respect
2 for the law, to provide just punishment and to afford adequate
3 deterrence to criminal behavior.

4 Beginning with the nature and circumstances of the
5 offenses, Mr. Amanat was charged with participating in two
6 complex fraudulent schemes -- one of which was aimed at
7 defrauding investors in a small hedge fund called Maiden
8 Capital and the other aimed at defrauding the shareholders of
9 KIT Digital, a public company. I have discussed these schemes
10 in some detail today, and I described the schemes in much
11 greater detail in the opinion denying Mr. Amanat's post-trial
12 motions. (Dkt. No. 1204) Suffice it to say that both schemes
13 involved conduct that was blatantly and flagrantly wrong and
14 illegal. That would have been obvious to someone fresh out of
15 business school, but it had to have been crystal clear to
16 Mr. Amanat, who had worked in the financial space for many
17 years. It is obvious that you can't lie to someone about what
18 is happening with their investment; it's obvious that you can't
19 generate statements every month fabricating financial
20 performance of an investment; and it's obvious that you can't
21 sign audit confirmations indicating that you are holding
22 millions of dollars for a public company when in fact you have
23 lost all the company's money.

24 As is often true, particularly in white collar crimes,
25 the reasons why Mr. Amanat committed these crimes remain

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1 entirely obscure. He is a very intelligent person, he has an
2 incredibly supportive family, he is gifted and has always been
3 gifted. Why would he descend to this level of fraud? But this
4 has been an issue at least since 2002, when he engaged in fraud
5 as the chief technology officer of Tradescape.

6 As to Mr. Amanat's history and characteristics, he is
7 50 years old. He is the eldest of four children. His parents
8 are both highly educated. His father has a Ph.D. in
9 pharmacology and his mother was a schoolteacher. He was raised
10 in a supportive and stable home, first in Elmhurst, NY, and
11 later in suburban New Jersey. He has a large extended family,
12 which is a community in itself.

13 He was a gifted child, and obtained entry to Hunter
14 College High School. It's probably more difficult to get into
15 than most colleges in the United States. He then attended
16 Johns Hopkins University, graduating in 1993 with a bachelor's
17 degree in biomedical engineering. His goal was to be involved
18 in the development of medical devices. He went on to take
19 graduate courses in the same field at Rutgers University
20 between 1996 and 1998.

21 At some point, as we have heard, Mr. Amanat was
22 diverted from his interest in biomedical engineering and
23 medical devices. In 1996, he became the chief technology
24 officer for a start up online securities trading firm owned by
25 his brother, Omar Amanat, who was the company's chief executive

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1 officer. While in this position, he became the subject of an
2 SEC enforcement proceeding, in which the Commission alleged
3 that he had engaged in a large-scale wash trades in order to
4 obtain rebates from NASDAQ. In November 2006, the commission
5 issued a cease and desist order against him, which found that
6 he had committed securities fraud in engaging in these wash
7 trades. I think the scheme yielded \$50,000. Again, why? As a
8 result of this conduct, he was barred from the industry for
9 five years, and a \$60,000 civil penalty was imposed. He was
10 also enjoined from committing or causing any violations of
11 §10(b) or Rule 10b-5.

12 After his time at Tradescape, Mr. Amanat worked as a
13 technology consultant for a brokerage firm in Glendale,
14 California. He then moved to Dubai, where he started Enable
15 Invest Limited, a financial and investment firm. He started
16 several other financial consulting firms in Dubai. He returned
17 to the United States in 2010 to take care of his father, who
18 had been stricken by cancer. He has also worked as a
19 consultant for a medical laboratory testing services company
20 and for a medical clinic and a private physician.

21 As to his personal life, in 1999, Mr. Amanat was
22 married. The couple have four children. And as we have heard,
23 in 2020, Mr. Amanat and his wife were divorced.

24 As to medical condition, Mr. Amanat has no significant
25 physical problems. As to mental health, he has previously

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sought counseling for anxiety, stress and depression. There is no history of significant substance abuse.

Mr. Amanat has no criminal record. He's made a good adjustment to incarceration under extremely difficult conditions at the MDC. He's taught classes to other inmates. He's had no disciplinary infractions in over 34 months of incarceration.

In preparation for sentencing, I have read countless letters of support -- more than 80 -- from the defendant's family members and friends, many of whom are in the courtroom today, as well as in an overflow courtroom. Certain themes emerge from the letters. Mr. Amanat is a very kind and kindhearted person who has helped a lot of people. Many commented on his intelligence. Many commented on the fact that he's a good father, a good son, a good uncle, a good cousin, et cetera.

To summarize, the sentencing guidelines recommend a sentencing range of 108 to 135 months' imprisonment. The probation department has recommended a sentence of 108 months, based on an incorrect guidelines range of 135 to 168 months' imprisonment. The government seeks a sentence within the guidelines range that they have calculated of 87 to 108 months' imprisonment. The defendant seeks a sentence of time served which would amount to about 34 months' imprisonment.

With all of this in mind, I will now describe the

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1 sentence I intend to impose. And then I will ask the parties
2 if there's anything further they wish to say.

3 Mr. Amanat, despite his extraordinary gifts and his
4 many admirable personality traits engaged in highly culpable
5 criminal conduct for more than three years. He was a central
6 figure in two separate, but closely related fraud schemes. He
7 showed no concern for the investors in the small hedge fund run
8 by Stephen Maiden. And he agreed to assist the officers of KIT
9 Digital in defrauding the company's shareholders.

10 The SEC enforcement order issued against Mr. Amanat in
11 November 2006 should have deterred him from again committing
12 securities fraud. It did not. He moved to Dubai. And within
13 less than two years, he was engaged again in fraud, lying to
14 Stephen Maiden about the performance of his \$1 million
15 investment and preparing false monthly statements regarding the
16 performance of that investment. He lost Maiden Capital's money
17 and he lost KIT Digital's money, and then he spent the next
18 three years lying about what had happened to those investments,
19 preparing false monthly statements and signing false audit
20 confirmations.

21 Many of those who wrote letters to me said that they
22 cannot square Mr. Amanat's conduct in this case with their own
23 experience of him. Indeed. But it happened. And there's no
24 explanation for why.

25 There is much to say, however, in mitigation. The

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fact that the defendant has been a good father and a good son, a loyal friend, a resource to countless relatives and the fact that he has lived a life of kindness. The suffering that the defendant has already endured as a result of this case, including the failure of his 20-year marriage, the inability to assist his father during his dying days and not being present at his father's funeral, the terrible conditions that the defendant has endured at the MDC over the past 34 months, including the lockdown since the pandemic arrived in March of 2020, the lack of showers and hot food and the lack of family visits. Having considered all the circumstances, I conclude that a substantial variance from the guidelines range of 108 to 135 months' imprisonment is appropriate. A sentence within that range is not necessary either to deter Mr. Amanat or others similarly situated.

Having considered all the circumstances, I intend to impose an aggregate sentence of four years imprisonment. With respect to supervised release, I intend to impose an aggregate sentence of three years on the following conditions:

Mr. Amanat will not commit another federal, state or local crime. He will not unlawfully possess a controlled substance. He will refrain from unlawful use of a controlled substance. He will submit to one drug test within 15 days of release from imprisonment, at least two periodic drug tests thereafter. He will cooperate in the collection of DNA, as

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1 directed by the probation officer. I intend to impose the 12
2 standard conditions of supervised release set forth in the
3 presentence report, along with the following special condition:

4 Mr. Amanat will submit his person and any property,
5 residence, vehicle, papers, computer or other electronic
6 communication or data storage device under his control to a
7 search on the grounds that there's a reasonable suspicion that
8 violation of his supervised release may be found. Any search
9 is to be conducted at a reasonable time and in a reasonable
10 manner. Failure to submit to a search may be grounds for
11 revocation of release. Mr. Amanat will inform any other
12 residents that the premises may be subject to search pursuant
13 to this condition.

14 As to a fine, I find that Mr. Amanat lacks the ability
15 to pay a fine. Accordingly, I will not impose one.

16 I am required to impose a \$400 special assessment.

17 The government is not seeking an order of forfeiture
18 or an order of restitution. Accordingly, neither will be
19 imposed.

20 Ms. Chaudhry, is there anything further you wish to
21 say?

22 MS. CHAUDHRY: No. Thank you.

23 THE COURT: Mr. Amanat, is there anything further you
24 wish to say?

25 THE DEFENDANT: No. Thank you.

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1 THE COURT: Mr. Naftalis, anything further for the
2 government?

3 MR. NAFTALIS: No. Thank you, your Honor.

4 THE COURT: Mr. Amanat, for the reasons I just stated,
5 it is the judgment of this court that you be sentenced to four
6 years imprisonment and three years supervised release on each
7 of Counts One, Two, Three and Six with all terms to run
8 concurrently. Your terms of supervised release will be subject
9 to the mandatory standard and special conditions of supervised
10 release I just listed. You are ordered to pay a special
11 assessment of \$400.

12 I will say for the record that this sentence would
13 have been the same regardless of the sentencing guidelines
14 calculations regarding loss amount. Although I concluded that
15 the appropriate loss amount is 9.75 million, the sentence would
16 have been the same. Even if the loss amount was limited to
17 4.45 million, reflecting only the amount of money that Maiden
18 Capital investors lost in Enable and the \$2 million that KIT
19 Digital shareholders lost in Enable. I granted a significant
20 variance for the reasons I outlined, but I concluded a
21 significant sentence was necessary given the nature and
22 circumstances of the criminal conduct.

23 Mr. Naftalis, are there any open counts?

24 MR. NAFTALIS: Your Honor, we move to dismiss any
25 underlying indictments.

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1 THE COURT: That motion is granted.

2 Ms. Chaudhry, do you wish me to say anything as to
3 assignment and designation?

4 MS. CHAUDHRY: Your Honor, we ask that the Court
5 recommend that the Bureau of Prisons designate Mr. Amanat to
6 the closest facility from New Jersey, which I think might be
7 Fort Dix.

8 THE COURT: I'll recommend to the Bureau of Prisons
9 that Mr. Amanat be designated to the facility located in Fort
10 Dix, New Jersey. Failing that, another suitable institution in
11 New Jersey so that he may maintain ties with his family and
12 friends during his remaining period of incarceration.

13 Mr. Amanat, I am required to advise you of your appeal
14 rights. You have the right to appeal your conviction,
15 including the sentence I just imposed. With few exceptions,
16 any notice of appeal must be filed within 14 days of judgment
17 being entered in your case. Judgment will likely be entered
18 tomorrow. Your attorneys will discuss with you whether or not
19 you wish to file a notice of appeal. If you are not able to
20 pay the costs of appeal, you may apply for leave to appeal *in*
21 *forma pauperis*. If you request, the clerk of the court will
22 prepare and file a notice of appeal on your behalf.

23 Mr. Naftalis, anything else for the government?

24 MR. NAFTALIS: No. Thank you, your Honor.

25 THE COURT: Ms. Chaudhry, anything else for the

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1 defense?

2 MS. CHAUDHRY: Thank you, your Honor. Good afternoon.

3 THE COURT: We're adjourned.

4 (Adjourned)

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